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McQUAID, METZLER, MCCORMICK & VAN ZANDT LLP

FILE NUMBER 20661\002

DIRECT DIAL

August 20, 1996

DOCKET FILE COPY ORIGINAL

AUG 21 1996
FCC MAIL ROOM

Mr. William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Docket 96-7, RM-8732 and RM-8845

Dear Mr. Caton,

Enclosed please find an original and four copies of a "Response to Public Notice" and "Motion to Accept Late Response to Public Notice". Please send back to us the copy marked "Stamp and Return" in the postage paid envelope provided.

Sincerely,

McQuaid, Metzler, McCormick & Van Zandt


Roger J. Metzler

Enclosures

cc: Service List

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244

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

RECEIVED
AUG 21 1996
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In the Matter of)
)
Amendment of Section 73.202(b),) MM DOCKET NO. 96-7
Table of FM Allotments) RM-8845
(SunRiver, Oregon))

Chief, Allocations Branch

RESPONSE TO PUBLIC NOTICE

I. Introduction

Hurricane Broadcasting, Inc. ("Hurricane"), by its counsel, hereby files a response to the Commission's July 18, 1996 Public Notice (Report 2143, RM 8845). That Public Notice said the Hurricane counterproposal to RM-8732 (Banks and Redmond, Oregon) was also in conflict with a 'one-step' application at Corvallis, OR and directed that a response in RM-8845 be filed within 15 days of the Public Notice. This is that response but it is filed later than 15 days from the date of Public Notice.

This response is accompanied by a Motion to Accept Late Filed Response showing that (1) the petitioner never received the Notice and counsel for Petitioner did not receive or review the Notice¹, (2) Petitioner had already filed a letter, dated May 6, 1996 (Exhibit A hereto) which anticipates the FCC's July 18, 1996 filing and removes the conflict noted in the July 18 Public Notice, and (3) to the extent necessary to consider Petitioner's May 6 filing as the answer to the FCC's July 18 Public Notice, the public interest would be served by treating it as a timely filed response to that Public Notice.

¹Petitioner also note that the nature of its proposal is misdescribed in the "Nature of Petition" section of the July 18 Public Notice. That section describes Hurricane's Petition as a "Request Amendment of FM Table of Allotments to allot Channel 269C2 to Hurricane, OR ...". Clearly this is not an accurate description of a proposal to allot Channel 269C2 to Sun River, OR and is misleading in and of itself.

II. Argument

The FCC's Public Notice states that the Hurricane proposal of an assignment of Channel 269C2 to Sun River, OR which was filed as counterproposal to the KDBX Notice of Proposed Rulemaking (NPRM) is also mutually exclusive with a 'one-step' upgrade filed for Channel 268C at Corvallis, OR, and directs Hurricane to show why it could not have known about the Corvallis filing in the exercise of due diligence before filing its Sun River counterproposal. While Hurricane notes that the Corvallis application was filed the same day that the KDBX NPRM was issued by the FCC and information about the Corvallis application was not in the FCC's database when the engineer prepared the counterproposal, Hurricane also notes that it has already filed a response showing the issue is moot.

In their Joint Reply to the Hurricane counterproposal (RM-8732, MM Docket 96-7), KDBX and Combined Communications proposed a new channel (Channel 224C2) at Sun River, OR that would allow the KDBX proposal and a Sun River allocation to be granted. That proposal was technically unauthorized because Hurricane theoretically has no opportunity of right to comment on the proposal.

However, it made no sense to reject an otherwise acceptable proposal that would allow both parties to get the relief requested and the communities of license to get improved service, so Hurricane filed the May 6 letter, attached, saying that it would accept the solution (a different channel, Channel 224C2) proposal in the Joint Reply and it would waive any objection based on the timing.

Channel 224C2 is not mutually exclusive with the Corvallis application; allotment of 224C2 to Sun River, OR does not conflict with the KDBX upgrade at Banks, and that allotment does allow the grant of a new facility at Sun River, OR. It is therefore obviously in the public interest.

Since Hurricane has already filed a comment, before the July 18, 1996 Public Notice, stating that it would accept a proposal that would eliminate the conflict in the KDBX upgrade, and which would also eliminate the conflict set out in the July 18 Public Notice with the Corvallis application, the July 18 Public Notice was not required or appropriate. Hurricane suggests that the appropriate action is to accept the filing in RM-8732 as a filing in RM-8845, accept the solution proposed in the May 6 filing, and not dismiss the Hurricane counterproposal as amended by the May 6, comment.

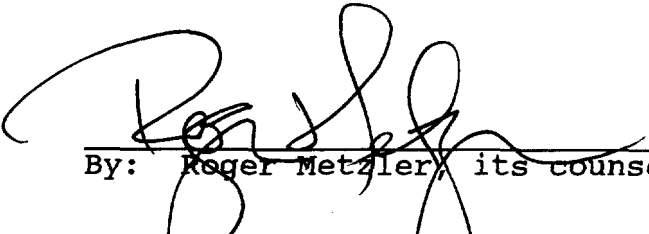
Finally, Hurricane notes that failure to adopt the proposal set out in RM-8732 and now advanced in this Rulemaking will mean more delay in instituting service for Sun Rive, OR and increased work

for everyone involved without any countervailing public interest.

Hurricane has received no objection to the channel change from 269C2 to 224C2; the channel change is not in conflict with either the KDBX (Banks, OR) upgrade or the Corvallis 'one-step' application and, if necessary, Hurricane can resubmit a proposal to allot Channel 224C2 at Sun River, OR. However, Hurricane should not have to refile. Hurricane's comments regarding the change of channel (which remove the conflict noted in the Public Notice) were on file at the FCC two months before the July 18 Public Notice, neither Hurricane nor its counsel received or reviewed a copy of the July 18 Public Notice, and the Public Notice was defective in describing the Hurricane proposal as a proposal to allot a channel to Hurricane, OR, not to Sun River, OR.

WHEREFORE, it respectfully requested that the FCC accept this comment, adopt the proposal advanced in RM-8732 by the Joint Reply (and accepted by Hurricane), which is a proposal to allot Channel 224C2 to Sun River rather than Channel 269C2, and grant the allocation of 224C2 to Sun River, OR.

Hurricane Broadcasting, Inc.



By: Roger Metzler, its counsel

McQuaid, Metzler, McCormick & Van Zandt
One Maritime Plaza, 23rd Floor
San Francisco, CA 94111-3577

August 20, 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

RECEIVED
AUG 20 1996
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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM DOCKET NO. 96-7
Table of FM Allotments)	RM-8845
(SunRiver, Oregon))	

Chief, Allocations Branch

MOTION TO ACCEPT LATE RESPONSE TO PUBLIC NOTICE

I. Introduction

Hurricane Broadcasting, Inc. ("Hurricane"), by its counsel, hereby files a Motion to Accept a Late Response to the Commission's July 18, 1996 Public Notice (Report 2143, RM 8845). That Public Notice said the Hurricane counterproposal, which was mutually exclusive with a Proposal to upgrade a station at Banks, OR, was in conflict with a 'one-step' application and directed that a response in RM-8845 be filed within 15 days of the Public Notice. The response accompanying this Motion is later than that.

The response is late because neither the Petitioner nor its counsel were aware of the Public Notice. While Petitioner is aware that stating that no one knew about the Public Notice ordinarily is not an adequate showing, there are several very important extenuating circumstances here. First, the FCC made a mistake: the Public Notice says that the Hurricane counterproposal was a proposal to allot channel 269C2 to Hurricane, OR, when the Hurricane proposal is a proposal to allot channel 269C2 to Sun River, OR. Second, Hurricane had already filed a letter, dated May 6, 1996 (Exhibit A hereto) which anticipates the FCC's July 18, 1996 Public Notice and removes the conflict set out in the Public Notice. Third, to the extent necessary to consider Hurricanes's May 6 filing as the answer to the FCC's July 18 Public Notice, the public interest would be served by treating it as a timely filed response to that Public Notice.

II. Argument

The FCC's public notice notes that the Hurricane proposal of an assignment of Channel 269C2 to Sun River, OR which was filed as counterproposal to the KDBX Notice of Proposed Rulemaking (NPRM) is also mutually exclusive with a 'one-step' upgrade filed for Channel 268C at Corvallis, OR, and directs Hurricane to show why it could not have known about the Corvallis filing in the exercise of due diligence before filing its Sun River counterproposal.

While Hurricane believes that it could show good cause for not knowing about the conflict, it had already abandoned the Channel 269C2 counterproposal in a letter to the FCC on May 6, 1996 by accepting the alternate channel 224C2, and thus there was no need for the July 18 Public Notice.

In their Joint Reply to the Hurricane counterproposal (RM-8732, MM Docket 96-7), KDBX and Combined Communications proposed a new channel (Channel 224C2) at Sun River, OR that would allow the KDBX proposal and a Sun River allocation to be granted. Hurricane filed the May 6 letter, attached, saying that it would accept the solution (a different channel, Channel 224C2) in the Joint Reply and it would waive any objection based on the timing.

Channel 224C2 is not mutually exclusive with the Corvallis application, allotment of 224C2 to Sun River, OR does not conflict with the KDBX upgrade at Banks, and it does allow the grant of a new facility at Sun River, OR. It is therefore obviously in the public interest.

Finally, Hurricane notes that failure to adopt the proposal set out in RM-8732 and now advanced in this Rulemaking will mean more delay in instituting service for Sun River and increased work for everyone involved without any countervailing public interest. Hurricane has received no objection to the channel change from 269C2 to 224C2; the channel change is not in conflict with either the KDBX (Banks, OR) upgrade or the Corvallis 'one-step' application and, if necessary, can resubmit the proposal to allot Channel 224C2 at Sun River, OR. However, it should not have to refile. Hurricane's comments regarding the change of channel (which remove the conflict noted in the Public Notice) were on file at the FCC two months before the July 18 Public Notice, neither Hurricane nor its counsel received or reviewed a copy of the July 18 Public Notice, and the Public Notice was defective in describing the Hurricane proposal as a proposal to allot a channel to Hurricane, OR.

WHEREFORE, it respectfully requested that the FCC accept this accompanying response, adopt the proposal advanced in RM-8732 by the Joint Reply (and accepted by Hurricane), which is a proposal to allot Channel 224C2 to Sun River rather than Channel 269C2,

and grant the allocation of 224C2 to Sun River, OR.

Hurricane Broadcasting, Inc.

A large, stylized handwritten signature in black ink, appearing to read 'R Metzler', is written over a horizontal line.

By: Roger Metzler, its counsel

McQuaid, Metzler, McCormick & Van Zandt
One Maritime Plaza, 23rd Floor
San Francisco, CA 94111-3577

August 20, 1996

DECLARATION OF ROGER METZLER

RECEIVED

AUG 21 1996

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I, ROGER METZLER, declare:

1. I am a citizen of the United States and over the age of eighteen (18) years old. If called as a witness, I could and would competently testify about the matters set forth in this declaration, except as to matters related on information and belief, and as to those I believe them to be true.
2. I am the lawyer at McQuaid, Metzler, McCormick & Van Zandt responsible for filing the Hurricane counterproposal to the Banks and Redmond allotment.
3. I was not served with the July 18, 1996 Public Notice setting forth the requirement that a response be filed addressing the Corvallis, OR 'one-step' application. I am informed and believe that my client was not served with a copy of the July 18, 1996 Public Notice.
4. I did not see the July 18 Public Notice about the Corvallis, OR matter in the copy I generally get from the service I use which delivers to me copies of the FCC's Public Notices.
5. I was unaware of, and to the best of my knowledge my client was unaware of, the July 18, 1996 Public Notice until counsel for a party in the Banks\Redmond matter called me late in the day on August 19, 1996 to ask if I had filed a reply

1 tot he July 18, 1996 Public Notice. Upon learning that I
2 knew nothing about the Public Notice, he faxed me a copy
3 that afternoon.

- 4
5 6. Hurricane's Response to the Public Notice, showing no con-
6 flict with the Corvallis, OR application is being sent by
7 overnight courier today.

8
9
10 I declare under penalty of perjury that the foregoing is true and
11 correct and that this declaration was executed on the 20th day of
12 August, 1996, in San Francisco, CA.

13 
14 Roger J. Metzler
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**DATE - STAMP
AND RETURN**

PLAZA

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SAN FRANCISCO, CALIFORNIA 94111-3577

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KECK, MAHIN & CATE

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AUG 27 1996

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FILE NUMBER 20861-002

DM15-544-9441

May 6, 1996

RECEIVED

MAY 7 1996

FCC MAIL ROOM

BY OVERNIGHT COURIER

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W. (SC1170)
Washington, D.C. 20554

Re: Hurricane Communications, Inc.
RM-8732 MM Docket 96-7

Dear Mr. Secretary:

On March 27, 1996, Hurricane proposed, in a Comment to a Rulemaking (RM8732), an alternate use of channel 269C2 than that proposed by KDBX in RM8732. In that Rulemaking, the FCC proposed the use of the channel 269C2 at Redmond, OR in place of 298C2, thus allowing KDBX to upgrade to channel 298C1 at Banks, OR. Hurricane's comment proposed that channel 269C2 be assigned to Sun River OR as that community's first local service.

In Joint Reply comments, and contrary to Commission policy and the specific instructions in the Notice of Proposed Rulemaking, KDBX and Combined Communications proposed a new channel (Channel 224C2) at Sun River, OR so that the proposal for the original allocation and upgrade could remain intact.

Hurricane is aware that the Joint commenters have no right to propose a new allocation when the rules and regulations of the FCC prohibit such proposals, and where the FCC has said that it will not consider the new allocation proposals because the other party is not authorized to reply. Nonetheless, Hurricane hereby notifies the

KECK, MAHIN & CATE

Mr. William F. Caton, Secretary
May 6, 1996
Page 2

FCC (i) that it is willing to have the FCC consider KDBX's alternate proposal for Sun River, and (ii) will not raise any objection to the allocation of channel 224C2 to Sun River as proposed by KDBX in place of channel 269C2 as proposed by Hurricane based on the timing of the proposed allocation.

Very truly yours,

KECK, MAHIN & CATE



Roger J. Metzler

cc: Hurricane Broadcasting, Inc.
James P. Riley, Esq.
J. Dominic Monahan, Esq.

CERTIFICATE OF SERVICE

I, Anna M. Fleming, hereby certify that on this 20th day of August, 1996, copies of the foregoing **MOTION TO ACCEPT LATE RESPONSE TO PUBLIC NOTICE** and **RESPONSE TO PUBLIC NOTICE** were mailed, first-class, postage prepaid, to the following:

James P. Riley, Esquire
Anne Goodwin Crump, Esquire
Fletcher Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209
Counsel for Common Ground Broadcasting, Inc.

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Donald E. Martin, P.C.
P.O. Box 19351
Washington, D.C. 20036
Counsel for Life Talk Broadcasting Association

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Leslie K. Shapiro
Federal Communications Commission
Mass Media Bureau
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Anna M. Fleming